

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **200743029**

Release Date: 10/26/2007

Index Number: 2632.00-00, 2652.00-00,  
2652.01-00, 2652.01-02,  
2654.00-00, 9100.00-00,  
2642.00-00

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:PSI:B04  
PLR-153612-06  
Date: JULY 02, 2007

### Legend:

Decedent =  
Spouse =  
Date 1 =  
Date 2 =  
Son 1 =  
Son 2 =  
Daughter =  
Trust =  
Accountant =  
Date 3 =

Dear :

This is in response to a letter, dated November 14, 2006, from your authorized representative, and subsequent correspondence, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to sever Trust A under § 26.2654-1(b)(1)(ii) of the Generation-Skipping Transfer Tax Regulations into GST Exempt Trust A and GST Non Exempt Trust A, to make a “reverse” qualified terminable interest property (QTIP) election under § 2652(a)(3) of the Internal Revenue Code with respect to GST Exempt Trust A, and to allocate Decedent’s available GST exemption to GST Exempt Trust A under § 2632(a).

## FACTS

The facts and representations submitted are summarized as follows. On Date 1, Decedent created a revocable trust (Trust). Decedent died on Date 2, survived by three children, Son 1, Son 2, and Daughter, and by Spouse. Under the terms of Decedent's Last Will and Testament, Decedent's residuary estate passed to Trust.

Under the terms of Trust, at Decedent's death, Trust was divided into Trust A and Trust B. Trust A holds Trust assets intended to qualify for the federal estate tax marital deduction. Trust B holds the balance of Trust assets.

Under the terms of Trust A, the Trustee will pay to or for the benefit of Spouse for his life the entire net income of Trust A at least quarterly and, also, such amounts of corpus as the Trustee deems advisable for Spouse's education, health, maintenance and support, taking into account Spouse's income from other sources. Spouse may direct the Trustee to exchange non-income producing property for income producing property. At Spouse's death, the remaining assets will be distributed to Decedent's children and grandchildren in such manner and proportions as Spouse appoints and, in default, to Decedent's three children if then living, or, if not, per stirpes, to the issue of a deceased child of Decedent. Trust authorizes the Trustee to allocate Decedent's available GST exemption, divide Trust A into a GST exempt and nonexempt trust, representing two fractional shares, and make the reverse QTIP election under § 2652(a)(3) for the exempt trust.

Accountant, a certified public accountant, prepared and timely filed the Form 706, Federal Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. A QTIP election was made with respect to Trust A on Schedule M of the return. However, Accountant inadvertently failed to make the reverse QTIP election for any part of Trust A or to allocate Decedent's GST exemption on Schedule R. It is represented that Decedent never allocated any GST exemption during her life and at her death there were no direct skips. Spouse died on Date 3.

The parties propose to divide Trust A into GST Exempt Trust A and GST Nonexempt Trust A. GST Exempt Trust A will be funded with an amount determined by multiplying the current fair market value of Trust A on the date of severance, plus the amount of principal distributions made from Trust, by a fraction. The numerator of the fraction is equal to the Decedent's available GST exemption, and the denominator is equal to the value of Trust A as finally determined for federal estate tax purposes. The GST Non Exempt Marital Trust will consist of the remaining balance of the current value of Trust A on the date of severance.

## LAW AND ANALYSIS

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property which passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) disallows this deduction where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, an interest passing to the surviving spouse will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, for purposes of § 2056(a), such property shall be treated as passing to the surviving spouse, and for purposes of § 2056(b)(1)(A), no part of such property shall be treated as passing to any person other than the surviving spouse.

Section 2056(b)(7)(B)(i) defines the term “qualified terminable interest property” as property: (i) which passes from the decedent; (ii) in which the surviving spouse has a qualifying income interest for life; and (iii) to which an election under § 2056(b)(7) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (i) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals; and (ii) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property shall be made by the executor on the return of tax imposed by § 2001. Such election, once made, shall be irrevocable.

Section 2601 imposes a tax on every generation-skipping transfer, which is defined under § 2611 as a taxable distribution, a taxable termination, and a direct skip.

Section 2631(a), for the year in issue, provides that for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)), that may be allocated by such individual (or by his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that once an allocation of GST exemption is made, it is

irrevocable.

Section 2632(a) provides that the allocation of the GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions). Section 26.2632-1(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate United States Estate (and Generation-Skipping Transfer) Tax Return (Form 706), filed on or before the date prescribed for filing the return by §6075(a) (including any extensions actually granted).

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or taxable termination might occur at or after such individual's death.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g)(1)(A), which was enacted into law on June 7, 2001.

Section 2642(g)(1)(B) provides that in determining whether to grant relief, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief, the time for making the allocation shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-34 I.R.B. 189, provides, in part, that under § 2642(g)(1)(B), the time for allocating the GST exemption to transfers at death is to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(2) under the provisions of § 301.9100-3.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means, in the case of property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent

may elect to treat all of the property in the trust, for purposes of chapter 13, as if the QTIP election had not been made (reverse QTIP election).

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that a reverse QTIP election is made on the return on which the QTIP election is made.

Section 2654 provides, in part, that, for purposes of the GST tax, the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts.

Section 26.2654-1(b)(1)(ii) provides that the severance of a trust that is included in the transferor's gross estate (or created under the transferor's will) into two or more trusts is recognized for purposes of chapter 13 if the governing instrument does not require or otherwise direct severance but the trust is severed pursuant to discretionary authority granted either under the governing instrument or under local law; and (A) The terms of the new trusts provide in the aggregate for the same succession of interests and beneficiaries as are provided in the original trust; (B) The severance occurs (or a reformation proceeding, if required, is commenced) prior to the date prescribed for filing the federal estate tax return (including extensions actually granted) for the estate of the transferor; and (C) The new trusts are severed on a fractional basis. If severed on a fractional basis, the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a non pro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measured from the valuation date to the date of funding.

Section 26.2654-1(b)(3) provides that an individual's GST exemption under § 2632 may be allocated to the separate trusts created pursuant to this section at the discretion of the executor or trustee.

Under § 301.9100-1(c), the Commissioner may grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except Subtitles E, G, H, and I.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose due date is prescribed by a regulation (and not expressly provided by statute).

Requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer

acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

In this case, because a QTIP election was made on Decedent's Form 706, the assets of Trust A are includible in Spouse's gross estate pursuant to § 2044. Spouse is considered the transferor of such property for GST tax purposes, thereby precluding the allocation of any of Decedent's GST exemption to Trust A. However, if Decedent's estate is granted an extension of time to sever Trust A into GST Exempt Trust A and GST Nonexempt Trust A and to make a reverse QTIP election with respect to GST Exempt Trust A, Decedent will be treated as the transferor of GST Exempt Trust A for GST tax purposes.

Based on the facts submitted and representations made in this case, we conclude that the requirements of § 301.9100-3 and § 26.2654-1(b) have been satisfied. Accordingly, we grant Decedent's estate an extension of time of 60 days from the date of this letter to sever Trust A into GST Exempt Trust A and GST Nonexempt Trust A, to make a reverse QTIP election with respect to GST Exempt Trust A, and to allocate Decedent's available GST exemption to GST Exempt Trust A.

The reverse QTIP election and allocation of GST exemption should be made on a supplemental Form 706. The supplemental Form 706 should be filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be attached to the return. A copy is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

William P. O'Shea  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter